MOTION FILED
APR 19 1993

No. 92-1544

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

PACIFIC LEGAL FOUNDATION,
Petitioner,
v.
PAUL KAYFETZ; VICTOR AMOROSO; DIANA LOPEZ FARNSWORTH; DORIS ELAINE LEMIEUX; JACK BOWEN MCCLELLAN; WILLIAM NIMAN; ORVILLE SCHELL; MARGUERITTE HARRIS; JUDITH WESTON; and BOLINAS COMMUNITY PUBLIC UTILITY DISTRICT,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE OF AMERICAN FARM BUREAU FEDERATION AND CALIFORNIA FARM BUREAU FEDERATION IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE OF AMERICAN FARM BUREAU FEDERATION AND CALIFORNIA FARM BUREAU FEDERATION

American Farm Bureau Federation and California Farm Bureau Federation (collectively "Farm Bureau") respectfully move for leave to file the attached brief *amici curiae*, pursuant to Supreme Court Rule 37. Consent from Petitioner is attached hereto. Consent has been requested from Respondents. It has been denied by Respondent Bolinas Community Public Utility District, but it has neither been granted nor denied by other Respondents.

American Farm Bureau Federation is a not-for-profit, voluntary, general farm organization incorporated under the laws of the State of Illinois. Its purposes are to promote, protect and represent the economic, social and educational interests of farmers and ranchers across the United States. The largest general farm organization in the country, American Farm Bureau Federation has member state organizations in all 50 states and Puerto Rico, representing the interests of more than four million member families. The American Farm Bureau Federation has brought litigation and assisted in litigation on issues of national significance and impact to agriculture.

California Farm Bureau Federation is a nongovernmental, nonprofit, voluntary membership California corporation. Its members are 53 county Farm Bureaus with a combined membership of more than 75,000 individual families in 56 California counties. California Farm Bureau Federation membership represents more than 80% of all commercial farmers in California. Its purposes include to work for the solution of the problems of the farm, the farm home, and the rural community and to represent, protect, and advance the social, economic and educational interests of the farmers in California. California Farm Bureau Federation has provided assistance to parties who choose to litigate matters which may significantly impact California's farms.

The preservation of the right to utilize the courts to correct injustices and pursue policy issues through litigation and review by the U.S. Courts of Appeals and U.S. Supreme Court are of paramount importance to the American Farm Bureau Federation and the California Farm Bureau Federation. The ability of Farm Bureau to bring litigation on behalf of its members or to support member litigation (in a nonbarratrous manner) are vital in order that Farm Bureau promote the interests of agriculture. Many agricultural issues are dependent upon the courts for resolution.

Farm Bureau members have a direct and vital interest in the preservation of the ability to pursue remedies through the courts. The Ninth Circuit's utilization of its "inherent power" to impose sanctions extends beyond the realm of caution for litigants; it sends a message to future litigants that overaggressive and perhaps tenuously founded claims will not be tolerated, but instead punished. Legal creativity, which is essential to the evolution and development of the law, will be deterred.

WHEREFORE, Applicants American Farm Bureau Federation and California Farm Bureau Federation respectfully pray that their Motion for Leave to file the attached Brief *Amici Curiae* in favor of the Writ of Certiorari be granted.

Respectfully submitted,

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BRIEF AMICI CURIAE OF AMERICAN FARM BUREAU FEDERATION AND CALIFORNIA FARM BUREAU FEDERATION IN SUPPORT OF PETITIONER

American Farm Bureau Federation and California Farm Bureau Federation respectfully submit this brief as *amici curiae*.

Amici curiae, the American Farm Bureau Federation and California Farm Bureau Federation (collectively "Farm Bureau"), pray that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

INTEREST OF *AMICI CURIAE*

American Farm Bureau Federation (AFBF) is a voluntary general farm organization formed in 1919 and organized in 1920 under the General Not-For-Profit Corporation Act of the State of Illinois. AFBF has its principal offices in Park Ridge, Illinois. AFBF was founded to protect, promote, and represent the business, economic, social, and educational interests of American farmers and ranchers. AFBF has member organizations in 50 states and Puerto Rico, representing more than four million member families. AFBF farm and ranch members produce virtually every kind of agricultural commodity produced commercially in the United States. The American Farm Bureau Federation has brought litigation and assisted in litigation on issues of national significance and impact to agriculture.

California Farm Bureau Federation is a nongovernmental, nonprofit, voluntary membership California corporation. Its members are 53 county Farm Bureaus with a combined membership of more than 75,000 individual families in 56 California counties. California Farm Bureau Federation membership represents more than 80% of all commercial farmers in California. Its purposes include to work for the solution of the problems of the farm, the farm home, and the rural community and to represent, protect, and advance the scoial, economic and educational interests of the farmers of California. California Farm Bureau Federation has provided assistance to parties who choose to litigate matters which may significantly impact California's farms.

The preservation of the right to utilize the courts to correct injustices and pursue policy issues through litigation and review by the U.S. Courts of Appeals and U.S. Supreme Court are of paramount importance to the American Farm Bureau Federation and the California Farm Bureau Federation. The ability of Farm Bureau to bring litigation on behalf of its members or to support

member litigation (in a nonbarratrous manner) are vital in order that Farm Bureau promote the interests of agriculture. Many agricultural issues are dependent upon the courts for resolution.

Farm Bureau members have a direct and vital interest in the preservation of the ability to pursue remedies through the courts. The Ninth Circuit's utilization of its "inherent power" to impose sanctions extends beyond the realm of caution for litigants; it sends a message to future litigants that overaggressive and tenuously founded claims will not be tolerated, but instead punished. Legal creativity, which is essential to the evolution and development of the law, will be deterred.

At the same time, Farm Bureau recognizes that the court system is not to be abused. The sanctity and decorum of the courts are to be preserved. However, decisions which infuse a reluctance on potential litigants due to overzealous application of the inherent power doctrine must be remedied by this Court. The decision below threatens the right to litigate and be properly heard. It is necessary that this Court further define guidelines for the implementation of the inherent powers of a court.

STATEMENT OF THE CASE

The case is as stated by the Petitioner.

REASONS FOR GRANTING THE WRIT

I. THE NINTH CIRCUIT COURT OF APPEALS ERRONEOUSLY APPLIED THE INHERENT POWERS DOCTRINE TO THE FACTS OF THIS CASE ESPECIALLY BY APPLYING THE DOCTRINE TO A NON-PARTY TO THE LITIGATION

It is generally acknowledged that the courts have a power, inherent power, to impose sanctions which are necessary for a court to dispense in order for "courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Link v. Wabash R. Co.*,

370 U.S. 626, 82 S.Ct. 1386 (1962). See also *Van Sickle v. Holloway*, 791 F.2d 1431 (10th Cir. 1986). Such "inherent powers must be exercised with restraint and discretion." *Chambers v. Nasco, Inc.*, 111 S.Ct. 2123 (1991). Yet none of the cases cited by the Ninth Circuit nor those cited in *Chambers v. Nasco, supra,* extended the inherent powers of the court to implementation of sanctions over parties who were not attorneys in the litigation or parties to the suit.

It is unprecedented for a court as did the Ninth Circuit Court of Appeals, to reach beyond the confines of the case itself and impose sanctions against neither attorney nor a party merely because of an *ex parte* finding that the facts warranted such. This is contrary to *Pennoyer v. Neff*, 95 U.S. 714, 24 L.Ed. 565 (1877) where this Court early on determined that due process required that a court not exert authority over an individual unless it had the power to reach the individual. Due process has always required "traditional notions of fair play and substantial justice," *Shaffer v. Heitner*, 433 U.S. 186, 97 S.Ct. 2659, 53 L.Ed.2d 683 (1977), before a court can exert its jurisdiction over an individual. See also *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. (1945).

It is the properly accomplished service of process which confers jurisdiction on an individual to adjudicate its rights. *F.T.C. v. Compagnie De Saint-Gobain-Pont-A-Mousson*, 636 F.2d 1300 (D.C. Circuit 1980). The record does not indicate that service of process was ever accomplished on Petitioner.[1] The question precedes one of a valid service of process: it is a question of adjudica-

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[1] Petitioner's Petition For A Writ Of Certiorari indicates on page 13 that it never submitted to the jurisdiction of the District Court. It only appeared to defend itself against the sanctions and consistently argued that the District Court lacked *in personam* jurisdiction. Petitioner in this Brief refers to Pacific Legal Foundation (PLF).

tion of sanctions without any service of process on the sanctioned Petitioner.[2]

The question before the Court is not whether *in personam* jurisdiction over Petitioner exists; it is whether Petitioner can be sanctioned without effect of *in personam* jurisdiction through service of process. Fed. R. Civ. P. 11 and 28 U.S.C. § 1927 were rejected. Either could have been imposed over attorneys or parties to the suit. The District Court and the Circuit Court broadly reached out to one not on record as an attorney or a party and imposed sanctions pursuant to the "inherent powers" doctrine. Such sanctions were imposed on one not before the court pursuant to a summons, subpoena, or warrant. Such conduct by a court goes beyond "fair play and substantial justice." *F.T.C. v. Compagnie De Saint-Gobain-Pont-A-Mousson, supra.* Such abuse of inherent power must be considered by this Court. *Chambers v. Nasco, Inc., supra,* which was relied on by the Ninth Circuit, required a court to comply "with the mandates of due process" when invoking its inherent power.

II. THE NINTH CIRCUIT COURT OF APPEALS HAD SUFFICIENT MEANS TO IMPOSE SANCTIONS WITHOUT USE OF INHERENT POWERS

Even if the issue of whether Petitioner was subject to the court's *in personam* jurisdiction is open to debate, it is quite clear that Petitioner was not a named plaintiff in the underlying litigation, neither was Petitioner acting as a law firm representing the plaintiffs in the underlying litigation as the Ninth Circuit concedes, *Lockary v. Kayfetz,* 974 F.2d 1166, 1170 n.2 (9th Cir. 1992).

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[2] The protracted litigation which resulted in *Harris v. Marsh,* 679 F. Supp. 1204 (E.D.N.C. 1987), *Blue v. U.S. Depart. Of Army,* 914 F.2d 525 (4th Cir. 1990), and others, indicated that the NAACP Legal Defense Fund was also a party of record in those proceedings. The lower court's order reversed by the Fourth Circuit at least apparently was not further tarnished by the District Court not having the sanctioned party before it as a party to the proceedings.

Expansion of the court's sanctioning power to an entity who is neither a named party nor a representative of a party raises significant concern to organizations like Farm Bureau who may offer legal, financial or expert assistance in a court proceeding to further members' interests. Significant assistance may be given without official participation and without any real ability to control the course of proceedings. An extension of the sanctioning authority may impede the ability to protect valuable rights.

In assessing a court's power to sanction, the Ninth Circuit focused on *Pavelic & LeFlore v. Marvel Entertainment Group*, 493 U.S. 120, 110 S.Ct. 456, 107 L.Ed. 438 (1989) and *Chambers v. Nasco, Inc.*, 111 S.Ct. 2123. Although the two cases appear to arrive at different conclusions regarding a court's use of inherent power to extend sanctions beyond delineated federal statutes or rules, both cases stress the risk of venturing outside the confines of legislatively enacted rules. The decision by the Ninth Circuit to uphold sanctions against Petitioner warrants review to demonstrate the error in reaching out with inherent power when the sanctity of judicial proceedings could have been maintained through existing rules and statutes.[3] It is appropriate to analyze the extension of authority to sanction because Petitioner does not fall neatly into the categories of entities sanctioned as outlined in *Pavelic*, a law firm, or *Chambers*, a party. It is essential to review the reason for focusing on Petitioner as the entity to be sanctioned, rather than the individual attorneys who prepared and submitted court documents on behalf of the plaintiffs.

Farm Bureau, who may elect to participate in litigation to further its members' interests, is by necessity dependent upon the attorneys who participate in court proceedings. The organization, managed by non-attorneys, is not competent to make an institutional judgment as to how

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[3] Fed. R. Civ. P. 11 and 280 U.S.C. § 1927 were the appropriate means of imposing sanctions.

far existing law may be stretched or the appropriateness of filings. The responsible attorneys must remain accountable for making legal determinations, as should have been the case for Petitioner. It is appropriate that responsibility for any conduct outside acceptable boundaries be limited to parties or representatives who possess appropriate authority. If the Ninth Circuit's interpretation of the manner in which sanctions are imposed is allowed to stand, organizations will be reluctant to expose their members to the financial risk of sanctions, as a result valuable rights may go unchampioned.

CONCLUSION

It is incumbent upon this Court to review extreme abuses by lower courts. In the instant case the District Court and the Circuit Court elevated inherent powers to a level of plenipotentiary power of the court. The courts are to correct disregard for due process and the traditional rules of fair play, not impose them. If the dignity of the courts is to be preserved, it is necessary that this Court review the Ninth Circuit decision in order that proper guidelines for administration of the inherent powers of a court be established.

We submit that the issues presented are of such importance that they should be considered by this Court. For these reasons, the Writ of Certiorari should be granted.

Respectfully submitted,

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